

Staff Summary Report



Council Meeting Date: 03/20/08

Agenda Item Number: _____

SUBJECT: This is the **introduction and first public hearing** to amend Chapter 13A of the Tempe City Code, relating to Environmental Programs and Standards by adding new Section 13A-7 relating to Fireplace Use Restrictions; adding new Article II relating to Outdoor Fires; adding new Article III relating to Dust Control; and **establishing the existence of an Emergency. The second public hearing is set for April 3, 2008.**

DOCUMENT NAME: 20080320cacc03 **TCC 13A – ENVIRONMENTAL PROGRAMS & STANDARDS**
Ordinance No. 2008.14

SUPPORTING DOCS: No

COMMENTS: The amendments are to comply with the State requirement that municipalities modify their ordinances to regulate burning, leaf blowers, and vehicle use on unpaved surfaces to aid in reducing particulate emissions and improving air quality.

PREPARED BY: Charlotte Benson, Senior Assistant City Attorney (350-2813)

REVIEWED BY: Don Hawkes, Water Utilities Department Manager (350-2660)

LEGAL REVIEW BY: Andrew Ching, City Attorney (350-8575)

FISCAL NOTE: N/A

RECOMMENDATION: Adopt Ordinance No. 2008.14 with an emergency clause so that its provisions become effective immediately upon adoption.

ADDITIONAL INFO: Establishing the existence of an emergency is necessary to achieve compliance with State requirements as soon as possible.

ORDINANCE NO. 2008.14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 13A OF THE TEMPE CITY CODE, RELATING TO ENVIRONMENTAL PROGRAMS AND STANDARDS BY ADDING NEW SECTION 13A-7 RELATING TO FIREPLACE USE RESTRICTIONS; ADDING NEW ARTICLE II RELATING TO OUTDOOR FIRES; ADDING NEW ARTICLE III RELATING TO DUST CONTROL; AND ESTABLISHING THE EXISTENCE OF AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 13A of the Tempe City Code is hereby amended by adding new Section 13A-7 to read as follows:

Sec. 13A-7. Use restrictions.

Fireplaces and woodstoves shall not be used during any high pollution advisory day forecast for particulate matter or restricted burn period declared by the county.

Section 2. That Chapter 13A of the Tempe City Code is hereby amended by adding new Article II to read as follows:

ARTICLE II. OUTDOOR FIRES

Sec. 13A-25. Purpose.

The purpose of this article is to regulate outdoor fires to reduce the amount of air pollution caused by particulate matter and to improve air quality.

Sec. 13A-26. Applicability.

This article applies to fire pits and other outdoor fires.

Sec. 13A-27. Outdoor fire restrictions.

(a) From May 1 through September 30 each year it is unlawful for any person to ignite, cause to be ignited, permit or allow to be ignited, any outdoor fire.

(b) No outdoor fire may be ignited or maintained during any high pollution advisory day forecast for particulate matter or restricted burn period declared by the county.

(c) The restrictions in subsections (a) and (b) may be varied only by the exceptional circumstances listed in A.R.S. § 49-501 or through a permit issued by the state or its delegated authority under A.R.S. § 49-501.

(d) Wood-burning in outdoor fires is prohibited at all times on city property, including city parks, unless permitted under Section 5-2, Chapter 23, or other authority of the Tempe City Code.

Section 3. That Chapter 13A of the Tempe City Code is hereby amended by adding new Article III to read as follows:

ARTICLE III. DUST CONTROL.

Sec. 13A-50. Purpose.

The purpose of this article is to improve air quality by regulating practices that contribute to the air pollution caused by particulate matter.

Sec. 13A-51. Definitions.

For purposes of this article, the following words and terms shall have the meaning ascribed thereto:

Leaf blower means a device that generates a stream of air to move landscape debris.

Motor vehicle means a self-propelled conveyance, including vehicles designed for use on roadways and those designed for off-road use.

Particulate matter means fine dust particles that contribute to air pollution and can harm human health.

PM-10 means particulate matter less than ten microns in diameter, a component of fugitive dust emissions from unpaved and unstabilized surfaces.

Public roadway means a street, alley, road, highway or thoroughfare that is used by the public or is open to public use for vehicular travel, including roadways in gated communities.

Stabilized surface means a surface that has been treated with asphaltic concrete, cement concrete, hardscape, brick, decomposed granite cover, crushed granite cover, vehicular duty pavers, penetration treatment of bituminous material and seal coat of bituminous binder and a mineral aggregate, gravel cover, grass or other continuous vegetative cover, or other means of stabilization approved by the city.

Sec. 13A-52. Leaf blower use restrictions.

- (a) No person may use a leaf blower to blow leaves, grass cuttings, other landscape debris, trash, soil or dust into a public roadway.
- (b) No person may operate a leaf blower except on surfaces that have been stabilized.
- (c) No person may operate a leaf blower during any high pollution advisory day forecast for particulate matter.

Sec. 13A-53. Motor vehicle use restrictions on unstabilized surfaces.

- (a) A person shall not operate a motor vehicle on an unpaved surface that is not a road, street, or lawful easement.
- (b) A person shall not park a motor vehicle on an unstabilized surface.
- (c) The following uses are exempted from the restrictions of subsections (a) and (b):
 - (1) Performing city operations using a marked city vehicle;
 - (2) Utility service providers performing service functions using a marked company vehicle; and
 - (3) Emergency operations directed by a public authority using official marked vehicles.

Sec. 13A-54. Requirements to stabilize vehicle use areas.

- (a) Motor vehicle parking, maneuvering, ingress and egress areas shall be stabilized at all developments other than residential buildings with four or fewer units.
- (b) Motor vehicle parking, maneuvering, ingress and egress areas at residential buildings with four (4) or fewer units shall be stabilized if the vehicle use areas total three thousand (3,000) square feet or more in size.
- (c) Owners of vacant land shall control dust emissions by stabilizing any unpaved area or by installing and maintaining physical barriers approved by the city to prevent vehicle access.

Sec. 13A-55. Requirements for street sweepers.

Street sweepers operating in the city shall be certified as PM-10 efficient street sweepers.

Sec. 13A-56. Violations.

(a) Violations of this article are subject to enforcement as provided in A.R.S. § 49-513, A.R.S. § 9-500.27, and Maricopa County Air Pollution Control Regulations § 300.

(b) Violations of this article are subject to enforcement as provided in chapters 19 and 21 of the Tempe City Code.

(c) The city may enter and inspect property subject to regulation under this article as necessary to determine compliance with this article.

(d) Any condition caused or permitted to exist in violation of any of the provisions of this article constitutes a threat to the public health, safety, and welfare, and is deemed a nuisance that may be summarily abated at the owner's expense, and is subject to a civil action to abate, enjoin, or otherwise compel the cessation of the nuisance.

(e) The remedies listed herein are not exclusive of any other remedies available under applicable federal, state, and local laws, and the city may, in its discretion, seek cumulative remedies. the city may recover its attorney's fees, court costs, and other expenses associated with enforcement of this article.

(f) This article is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

Section 6. **Emergency.** The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health, safety and general welfare of the community, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its adoption by the City Council of the City of Tempe.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2008.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney